IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A.No.1283 of 2004

....

D.Suriyakumari .. Appellant(Respondent)

vs.

R.Srikanth .. Respondent(Petitioner)

Appeal filed u/s 19 Family Court Act against the decree and judgment dated 7.1.2004 made in O.P.No.1723 of 2000 on the file of I Additional Principal Judge, Family Court, Chennai.

For Appellant : Mrs.Hema Sampath, S.C.
For M/s.P.B.Ramanujam
and P.B.Balaji

For Respondent : Mr.Johnson

* * * * *

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The Civil Miscellaneous Appeal is directed against the judgment and decree dated 7.1.2004 made in O.P.No.1723 of 2000, filed by the respondent-husband for divorce, granting decree of divorce by the learned I Additional Principal Judge, Family Court, Chennai, on the ground of cruelty under the following facts and circumstances of the case.

2.1. The respondent-husband and the appellant-wife got married on 14.11.1999 according to Hindu Religious rites and customs and after the marriage, they set up their matrimonial home in the respondent-husband's parental home at Vadapalani. According to the respondent-husband, the appellant-wife treated him with cruelty

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attracting Section 13(1)(ia) of the Hindu Marriage Act, 1955, alleging as hereunder.

2.2. The respondent-husband stated that even on the next day of the marriage, i.e., on 15.11.99, he was asked by the appellant-wife to wash her clothes, for which he refused. It was further stated that the appellant-wife was frequently telling him that she had been forced to marry him and that she was not at all interested in having marital relationship with him. According to the respondent-husband, she voluntarily informed him that she used to involve in Lesbian activities during her college days and that she also used to discuss about sex matters with third parties and when he enquired about that, she replied that he had no business to ask her in the matter.

2.3. The further statement of the respondent-husband in his petition for divorce was that the appellant-wife picked up quarrels frequently with him and also used to inform his office colleagues very badly about him and his family members, which caused untold mental agony to him and his health also got affected due to the misbehaviour of the appellant-wife. The respondent-husband further stated that the appellant-wife used to get phone calls even in odd hours and that when he used to call his wife, while she was working in a private concern, he came to know that she was irregular in attending office, which created a suspicion about the fidelity of the appellant-wife. It was also stated that the appellant-wife used to threaten him by frequently attempting to commit suicide leaving a suicide note stating that he is responsible for her death, which conduct had rendered the continuance of their life become intolerable and the behaviour of the appellant-wife towards the respondent-husband amounts to mental cruelty and hence, he sought for divorce from the appellant-wife. Lastly, the respondent-husband has also stated that he agreed for the custody of the child with the appellant-wife, who was in the advanced stage of pregnancy, after the delivery.

3.1. Resisting the above allegations strongly and strenuously, the appellant-wife stated in her counter statement before the Family Court that the above petition for divorce on the ground of cruelty is not maintainable as he was not subjected to any acts of cruelty and on the contrary, she was subjected to cruelty at the hands of the mother and sister of the respondent-husband. The appellant-wife stated that even though the respondent-husband showed love and affection towards her, his mother and sister had a dislike towards her and that they used to intimidate her in the daily chores of the matrimonial life. The appellant-wife had further stated that the respondent-husband was highly influenced by his mother and sister and that this petition could have been filed only at the instigation of his mother and sister. The further statement of the appellant-wife was that even at the time of proposal to the marriage, the

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respondent-husband immediately agreed the marriage proposal and also developed a liking for her, but his mother objected to the same and against the wishes of his mother, the marriage took place, on account of which, his mother developed a vindictive attitude against her. The appellant-wife further stated that as she earnestly wanted to preserve peace in the family, she did not even utter a word about the sufferings meted out to her at the hands of the mother of respondent-husband, even though she was very well aware that if informed, the respondent-husband would question the behaviour of his mother and sister.

3.2. The appellant-wife had further stated in her counter that as the mother of the respondent-husband strictly directed him not to converse with the appellant-wife, the appellant-wife was killed by excruciating silence in the family for more than a fortnight, more particularly when she needed utmost love and care from her beloved husband at the time of her advanced stage of pregnancy and ultimately, the silence broke down on 3.9.2000 when she was directed to leave the matrimonial home on the pretext of delivery. Thereafter, there was no conversation between the husband and wife and even to the notice issued by the appellant-wife informing the mental cruelty she suffered at the hands of the mother and sister of the respondent-husband, there was no response from the respondent-husband. Even after the birth of a female child on 28.11.2000, the respondent-husband did not take any effort to come and see his child.

3.3. In short, the appellant-wife, while denying the allegations made against her in the petition filed by the respondent-husband for divorce, had stated that only at the instigation of the mother and sister of the respondent-husband, the present petition has been filed and that the respondent-husband has got every love and affection towards her and she also equally reciprocated her love and affection towards him.

4. Under the above facts and circumstances, the Family Court framed the following issues:

"1. Whether the respondent-husband is entitled to get divorce on the basis of the averments stated in the petition ?

2. What other relief the respondent-husband is entitled to ?

5.1. In order to substantiate the averments made in the petition filed for divorce, the respondent-husband examined himself as P.W.1 and also examined a neighbour, by name, Rajalakshmi, as P.W.2 on his side. He also marked Exs.P.1 to P.6, of which, Ex.P.1 is the marriage invitation, Ex.P.2 is the notice dated 30.12.2000 sent by the appellant-wife to the respondent-husband and his mother, Ex.P.3 is the reply dated 17.1.2001 by the appellant-wife to Ex.P.2

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notice, Ex.P.5 is the certified copy of the order of this Court dated 18.10.2001 granting anticipatory bail to the respondent-husband and his mother and Ex.P.6 is a letter dated 11.10.2000 sent by the appellant-wife to the respondent-husband.

5.2. On the contrary, the appellant-wife examined herself as R.W.1 and she marked Exs.R.1 to 9, of which, Ex.R.1 is the letter dated 30.9.2000 written by the respondent-husband to the appellant-wife, Ex.R.2 is the letter dated 12.8.2000 written by the mother of the respondent-husband to the father of the appellant-wife, Ex.R.7 is the letter written by the father of the appellant-wife to the mother of the respondent-husband, Ex.R.8 is the greeting card given by the respondent-husband to the appellant-wife and Ex.R.9 series are the photographs taken in the family function of the appellant-wife, in which the respondent-husband attended along with the appellant-wife.

6. On the basis of above evidence, oral and documentary, the Family Court, accepting the case of the respondent-husband, granted decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955, on the ground that the appellant-wife treated the respondent-husband with cruelty.

7. Both the learned counsel for the appellant-wife and the respondent-husband reiterated their submissions made before the Court below. We have considered the submissions and perused the relevant records.

8. On going through the averments made in the petition filed by the respondent-husband as well as his oral evidence, both in chief and in cross coupled with the evidence of P.W.2, a neighbour, we find that the respondent-husband has made bald allegations against his wife and there is no basis for the said allegations. Even though the respondent-husband had stated in chief, reiterating the averments made in his petition for divorce, that the appellant-wife was frequently telling him that she was not at all interested in marital life and that she was forced to marry him by her parents, he went on to admit in his cross-examination that they lived jointly for about nine months and during such period, they had sexual intercourse for 60 times and that there was cordial relationship between his mother and the appellant-wife. He also admitted in cross that the respondent-wife was attending all the household chores. It is also not disputed by the respondent-husband that the appellant-wife became pregnant during that period and that she also gave birth to a female child thereafter. The above admitted facts falsify the very allegation that she committed cruelty, as referred to above. That apart, even though the respondent-husband averred in his petition that the appellant-wife indulged in lesbian activities, there is no supporting material produced by the respondent-husband for the same. On the contrary, the birth of a female child to them proves that

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there was a cordial relationship between the respondent-husband and the appellant-wife. That apart, there is also no material evidence, except the oral evidence of the respondent-husband as P.W.1, that the appellant-wife used to discuss about the sex matters with the third parties and also with the colleagues of the respondent-husband.

8. Further, even though it was alleged that the appellant-wife picked up quarrels with the neighbours, P.W.2, a neighbour, who was examined on the side of the respondent-husband, stated in her evidence in cross that she thought that even though the mother and sister of the respondent-husband were very much available and in spite of the presence of the servant-maid in the house, why the appellant-wife should come out for fetching water during her pregnancy period. She had further stated that the appellant-wife had visited her house only once. This evidence of P.W.2 clearly shows that there were no quarrels between the appellant-wife and the neighbours, on the other hand, the appellant-wife was only expressing her ill-feelings about the behaviour of her mother-in-law and sister-in-law.

9. On going through the over-all evidence, we find that the allegations made by the respondent-husband are bald and vague and there is no supporting material proving the said allegations. On the contrary, the evidence of the appellant-wife as R.W.1 as well as Ex.R.1, the letter written by the respondent-husband to the appellant-wife, Ex.R.2, the letter written by the mother of the respondent-husband to the father of the appellant-wife, Ex.R.7, the letter written by the father of the appellant-wife to the mother of the respondent-husband, Ex.R.8, the greeting card gifted by the respondent-husband to the appellant-wife and Ex.R.9, the photographs, all clinchingly show that there was cordial relationship between the husband and wife, due to which, the appellant-wife became pregnant and gave birth to a female child. Without appreciating the evidence, both oral and documentary, in proper perspective, the Family Court had rendered a finding that because the appellant-wife was alleged to have indulged in lesbian activities and was informing the respondent-husband that she was not at all interested in the marital life, the respondent-husband is entitled to get divorce from his wife on the ground of cruelty, by overlooking the vital facts, viz., the admission made by the respondent-husband as P.W.1, in cross that he lived with the appellant-wife for about nine months and that during such period, he had sexual intercourse with her for about 60 times and that she also became pregnant and gave birth to a female child. The said finding of the Family Court and the consequential award, in our considered opinion, are nothing but perverse and require interference of this Court and accordingly, interfered with.

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In result, the judgment and decree dated 7.1.2004 passed by the learned I Additional Principal Judge, Family Court, Chennai, in O.P.No.1723 of 2000 are set aside and the appeal is allowed. No costs.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The I Additional Principal Judge,
Family Court, Chennai.

+ 1 cc to Mr. P.B. Ramanujam, Advocate, SR No.62563/06

+ 1 cc to Mr. C. D. Johnson, Advocate, SR No.62859/06

JRG(CO)
SR/11.1.2007

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